IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 274 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHIMANBHAI DALSUKHBHAI TADVI
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 274 of 1997
MS BANNA S DUTTA for Petitioner No. 1-2
MR AJ DESAI APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellants-accused, Chimanbhai Dalsukhbhai Tadvi and Manchiben Chimanbhai Tadvi have challenged in this appeal the impugned judgment and order dated 21.2.1997 passed by the learned Addl. Sessions Judge, Bharuch, Camp at Rajpipla in Sessions Case No.38/96 whereby the learned Trial Judge convicted both the appellants-accused for the offences u/S.302 r/w.S.114 and 504 of the IPC. However, he acquitted them for the offences u/S.135 of the Bombay Police Act by giving benefit of doubt. Both the accused were sentenced to suffer life imprisonment and to pay fine of Rs.500/=, in default, to further undergo 1 year RI for the offences u/S.302 r/w.S.114 of the IPC. They were also sentenced to suffer 6 months RI and to pay fine of Rs.100/=, in default, to further undergo 1 month SI for the offence u/S.504 of the IPC. They were given set off for the period during which they remained in jail as under-trial prisoners.

#. It is the case of the prosecution that both the accused were believing that 8 months before the date of the incident, which took place on 25.11.1995 at 6.00 p.m. because of deceased-Ramilaben, wife of Jesalbhai Motibhai Tadvi, their buffalo died. Therefore, on the date of incident i.e. on 25.11.1995 at 6.00 p.m. when deceased-Ramilaben Jesalbhai Tadvi returning from their field with her sister-in-law, Savitaben Kantibhai Tadvi and her brother-in-law Natwarbhai Motibhai Tadvi, both the accused dragged her in the house of Ramanbhai Dalsukhbbai Tadvi. That the accused No.1-Chimanbhai Dalsukhbhai Tadvi gave axe blow on the head of Ramilaben and then on her neck and thereby caused her death. At the time of incident, both the accused gave filthy abuses to the deceased that it was she, who was responsible for the death of their buffalo. Savitaben PW-8 Ex.21 was accompanying deceased-Ramilaben and Natwarbhai Tadvi PW-7 Ex.20 was following at a distance of 30 mtrs. On hearing shouts of Savitaben, he reached to the place of incident and saw deceased-Ramilaben lying on the ground and the accused No.1 was holding axe in his hand. On seeing Natwarbhai, both the accused Chimanbhai and his wife Manchiben ran away from the place of incident. Natwarbhai had informed about the incident to Jesalbhai Motibhai Tadvi, husband of the deceased, who had lodged the complaint before the police immediately on the same day about the incident in question. After registering

the offence u/S.302 IPC, the police started investigation and arrested both the accused on the next day. The accused No.1 produced muddamal "axe" having blood stains. It was sent to the serologist for its report. Human blood was found on it and it matches with the blood group of the deceased. After completing the investigation, the police filed charge sheet against both the accused for the aforesaid offences before the court of learned Magistrate, who in turn committed the case to the court of Sessions. As stated earlier, they were tried before the court of learned Addl. Sessions Judge, Bharuch, Camp at Rajpipla, in Sessions Case No.38 of 1996 for the aforesaid offences and at the conclusion of the trial the learned Judge convicted them for the said offences and sentenced them to suffer life imprisonment. Both the appellants-accused have challenged the impugned judgment and order of conviction and sentence dated 21.2.1997 passed by the Trial Court through jail.

#. Jail record of both the appellants-accused shows that the appellant-accused No.1-Chimanbhai Dalsukhbhai Tadvi has remained in jail as under-trial prisoner for a period of 1 year 2 months and 28 days and after the order of conviction and sentence dated 21.2.1997 he has remained in jail for a period of 6 years 11 months and 7 days. Thus, in all, he remained in jail for a period of 8 years and 2 months. He has also earned remission of 2 years. Whereas, his wife, accused No.2-Manchiben had remained in jail as an under-trial prisoner for a period of 1 year 2 months and 25 days and after the order of conviction and sentence dated 21.2.1997 she remained in jail for a period of 3 years 2 months and 5 days. Thus, in all, she remained in jail for a period of 4 years and 5 months. She has earned remission of 2 years. At present, she is on bail in view of the order passed by this court on 26.4.2000 on the separate bail application filed in above appeal by her. This appeal was filed through jail. Learned counsel, Ms.Banna Datta was appointed by the Office to defend the appellants-accused in this case.

#. Ms.Datta had taken us through the entire evidence on record of this case as well as reasoning assigned by the learned Judge for convicting both the appellants-accused for the aforesaid offences and made following submissions:-

(a) There was enmity between the accused and the deceased prior to the incident, therefore, all the panch witnesses (1) complainant-Jesalbhai Motibhai Tadvi PW-1 Ex.6, (2) Natwarbhai Motibhai Tadvi PW-7 Ex.20 and (3) Savitaben Kantibhai

Tadvi PW-8 Ex.21 have tried to falsely involve both the appellants-accused. She submitted that complainant-Jesalbhai Motibhai Tadvi, who lodged FIR before the police at Ex.7 is none else but the husband of the deceased-Ramilaben. Admittedly, he has not witnessed the incident. He has been examined only with a view to prove the previous enmity between the parties. He has admitted that cross cases were filed against each other prior to the incident. Therefore, no reliance can be placed on his evidence. She has further submitted that both the so-called eye witnesses (1) Natwarbhai Motibhai Tadvi PW-7 Ex.20 and (2) Savitaben Kantibhai Tadvi PW-8 Ex.21 were closely related to the deceased-Ramilaben. Natwarbhai Motibhai Tadvi was younger brother of the husband of deceased-Ramilaben, whereas, Savitaben Kantibhai Tadvi is sister-in-law (derani) of deceased-Ramilaben. Thus, they were closely related to deceased and claimed to have witnesses the actual incident and their evidence is not at all reliable as the prosecution has not examined any family member of Ramanbhai Dalsukhbhai in whose house the incident in question took place. In view of this, Ms.Datta submitted that no reliance can be placed on the interested testimony of these two witnesses. She submitted that there were lot of omissions, improvements and contradictions in the evidence of both the witnesses Natwarbhai Motibhai Tadvi and Savitaben Kantibhai Tadvi, therefore, also their evidence should be discarded. She, therefore, submitted that both the appellants-accused be acquitted by giving benefit of doubt to them. In alternative, she submitted that in any case Manchiben, wife of the accused No.1-Chimanbhai Dalsukhbhai Tadvi cannot be convicted for the offence u/S.302 IPC r/w.S.14 IPC because Natwarbhai has not stated a word about the roll played by her at the time of commission of the offence. Similarly, on the point of presence of Manchiben at the time of incident and the roll played by her there is a material contradiction in her evidence before the court, which has been duly proved in the evidence of the I.O., Shri Balvantsinh Vaghela. Therefore, at least Manchiben should be given benefit of doubt.

#. Before appreciating the aforesaid submissions made by Ms.Dutta we would like to reproduce in nutshell the

relevant evidence of the main important three witnesses viz. (1) complainant-Jesalbhai Motibhai Tadvi PW-1 Ex.6, (2) Natwarbhai Motibhai Tadvi PW-7 Ex.20 and (3) Savitaben Kantibhai Tadvi PW-8 Ex.21.

#. Jesalbhai Motibhai Tadvi is the complainant and husband of deceased-Ramilaben. He has stated in his evidence before the court that prior to eight months of the incident, buffalo of the accused-Chimanbhai fell sick and died. Therefore, they were under the belief that his wife was a witch, who had killed their buffalo. On the day of incident when he was at his fields his grandson Jagdish came to the field and called him at the place of incident. Having gone to the house of Ramanbhai, he saw accused No.1-Chimanbhai Dalsukhbhai Tadvi and he saw the dead body of his wife. Thereafter, he had called Sarpanch of village and lodged complaint at Dediapara Police Station at Ex.7. In his cross-examination he clearly stated that he has not witnessed the incident. He also admitted that nearby the house of Ramanbhai there are houses of Chota Dalsukh, Kanchan Dalsukh, Bhola Dalsukh and Chiman Dalsukh. His house is also nearby the house of Ramanbhai Dalsukhbhai. He denied the suggestion that he had taken money from accused Chimanbhai for water pipes and because the accused was demanding the money, therefore, he had a quarrel with him. However, he admitted in his cross-examination that 8 months prior to the incident, cross complaints were filed against each other and those cases were pending. However, he denied that because of the enmity he has falsely given the names of the accused.

#. From the aforesaid evidence of this witness, complainant-Jesalbhai Tadvi, it is clear that he has not actually witnessed the incident. It has also come out in his evidence that admittedly there was enmity between both the sides and in fact cross cases were filed, which were also pending even as on the date of the incident. One thing has come out in his cross-examination that there were cross-cases filed between them prior to the incident. It is also true that he is highly interested witness because his wife has died in the incident. It is also true that he was hostile to the accused persons. If there was only evidence of this witness, then there would have been different consideration. However, there is direct evidence at least against the appellant-accused No.1-Chimanbhai, if not against appellant-accused No.2-Manchiben, in the form of two eye witnesses (Natwarbhai Motibhai Tadvi and Savitaben Kantibhai Tadvi). It is no doubt true that both the witnesses are also closely related to the deceased. But that should

not be the ground to discard their evidence. Their evidence is required to be closely scrutinised and having carefully scrutinised their evidence, we are of the considered opinion that at least the prosecution has proved its case against the appellant-accused No.1-Chimanbhai.

#. Savitaben Tadvi PW-8 Ex.21 has stated in her evidence that deceased-Ramilaben was her sister-in-law (jethani). On the day of incident at about 3.00 p.m. she had gone with her sister-in-law-Ramilaben and Natwarbhai to the fields and they were returning from the field at about 5.30 p.m. Her brother-in-law (Natwarbhai) was following them. The incident had taken place near the house of Ramanbhai Dalsukhbhai. At that time he was at a distance of 30 mtrs. from them. There are no other houses on the lane of the house of Ramanbhai Dalsukhbhai. When they reached near the house of Ramanbhai Dalsukhbhai at that time the accused No.1-Chimanbhai Tadvi and Manchiben had quarreled with them. At that time Manchiben told Ramilaben that she was a witch and because of her, their buffalo died. Thereafter, Manchiben and Chimanbhai caught hold of Ramilaben's hair and dragged her in the house of Ramanbhai Dalsukhbhai. She had also went inside the house where Manchiben caught hold of Ramilaben and Chimanbhai Tadvi gave axe blow on the left side of her head, which she had seen from the near distance. At that time Manchiben left Ramilaben because of that she fell on the ground. At that time accused No.1-Dalsukhbhai Tadvi gave another blow on her neck. She was not knowing at that time where Natwarbhai was, but she came out from the house and raised shouts. On hearing her shouts Natwarbhai came running and went inside the house of Ramanbhai Dalsukh. She told Natwarbhai that your sister-in-law was killed. Natwarbhai had gone inside the house and thereafter she left the house and went to her own house. She had identified the accused No.1 in the court and muddamal axe, which was used at the time of commission of offence. In her cross-examination she has stated that she had not interfered to save Ramilaben at the time of incident. There are other houses also nearby the house of Ramilaben. She has not raised shouts at the time of incident. People of nearby vicinity had not gone there. In her cross-examination she has tried to explain that police had recorded her half statement, therefore, she had not stated in her statement that Manchiben caught hold of Ramilaben inside the house and Chimanbhai gave axe blow on her head and after she fell down another blow was given on her neck. She has also admitted that after she came Natwarbhai has gone inside the house. The incident continued for about 15 minutes. She has denied

the suggestion that other persons of the village were also coming when they were returning from the field. She denied the suggestion that because of the prior dispute, which took place 8 months before the incident they had falsely given names of the accused.

#. From the above evidence of this witness Savitaben, it is clear that she has not stated in her statement made before the police about the role of Manchiben at the time of incident that Manchiben caught hold of Ramilaben and Chimanbhai Tadvi gave axe blow on the head and thereafter on the neck. She has for the first time stated about the role of Savitaben catching hold of Savitaben before the court. I.O., Shri Balvantsinh Vaghela PW-9 Ex.22 has admitted that Savitaben had not stated in her evidence about the aforesaid fact.

##. In view of all these, it is difficult for us to maintain the order of conviction and sentence passed by the learned Judge convicting the accused No.2-Manchiben for the offences u/S.302 r/w.S.114 IPC.

##. However, the evidence of this witness Savitaben against accused No.1 is found to be wholly reliable. Her presence at the time of incident cannot be doubted because she was sister-in-law of Ramilaben and since 3 days of the incident they were together. They first gone to their field and after completing their work in the field they were returning along with Natwarbhai. She was walking with deceased Ramilaben when accused No.1-Chimanbhai caught hold of hair of Ramilaben and dragged her in the house of Ramanbhai Dalsukhbhai. It would be natural reaction on the part of this witness, Savitaben to enter the house of Ramanbhai Dalsukhbhai and witness the actual incident of accused No.1-Chimanbhai giving blow with axe. Her evidence is corroborated with the evidence of Dr.Arvindkumar PW-2 Ex.11, who has stated in his evidence before the court that deceased Ramilaben that two injuries; one on her head and the other on her neck. Savitaben had also identified the weapon in the court, which was produced by the accused before the police and seized under the Panchnama Ex.16. Muddamal article "axe" was having blood stains. Serological report shows that human blood was there which was of deceased-Ramilaben. Her evidence is fully corroborated by Natwarbhai PW-7 Ex.20. He had stated in his evidence before the court that they were going together at that time the incident in question, which took place at about 6.00 p.m. Savitaben, who is his sister-in-law was going with deceased-Ramilaben, who was following them at a distance of 30 mtrs. at that time he is near the house

of Ramanbhai Dalsukhbhai, Savitaben raised shouts "run run Ramilaben is assaulted". Immediately he reached the place of incident within 2-3 minutes and saw accused No.1 having axe in his hand. It is interesting to note that a question was put by the court to this witness that when he reached the house of Ramanbhai Dalsukhbhai was "kulhadi" lying there? One more question was put to him by the court whether in his presence Manchiben had done something or uttered something? Reply to the question was "no" . Thus, he had not actually witnessed the incident, but his presence immediately after the occurrence of the incident at the place of incident is not at all in doubt. Thus, evidence of Savitaben gets corroboration on certain points from the evidence of this witness Natwarbhai.

##. It is no doubt true that members of the family of Ramanbhai stated to have been present in the house at the time of incident. As stated by Natwarbhai in his cross-examination, it is also true that none of them is examined before the court by the prosecution. However, it appears that Ramanbhai Dalsukhbhai is none else but brother of accused-Chimanbhai Dalsukhbhai-accused No.1. Therefore, obviously their evidence would not be of any help to the prosecution. That apart no question was put to the I.O. Shri Vaghela as to whether he had recorded statement of the family members of Ramanbhai Dalsukhbhai or not or he had recorded statement of any other individual witness or not.

##. In view of the above, when the incident had happened in the house, then absence of examining any independent witness would not materially affect the prosecution case.

##. It is no doubt true that we have not relied upon the evidence of the witness-Savitaben for convicting accused No.2 because we have not found her evidence qua accused No.2-Manchiben reliable or trustworthy. But when we are fully satisfied with her evidence against the accused No.1-Chimanbhai, then there is no reason for us to discard her testimony merely because she is close relative of deceased-Ramilaben.

##. We have carefully gone through the evidence of prosecution witnesses, including the evidence of Savitaben, we are not convinced that the prosecution has proved its case against the appellants-accused Nos.1 & 2 Chimanbhai Dalsukhbhai Tadvi and Manchiben Chimanbhai Dalsukh Tadvi for the offence u/S.504 of the IPC. Therefore, conviction recorded by the Trial Court convicting both the appellants-accused guilty for the

offence u/S.504 of the IPC is required to be quashed and set aside.

##. In view of the above discussion, this joint appeal filed by the appellants-accused against the judgment and order of conviction and sentence dated 21.2.1997 passed by the learned Sessions Judge, Bharuch, camp at Rajpipla, convicting them for the offence u/S.504 IPC and sentencing them to suffer 6 months RI and to pay fine of Rs.100/= in default to further undergo 1 month RI is hereby quashed and set aside. Fine, if paid, be refunded to both the appellants-accused.

#. This appeal filed by the appellant-accused No.2-Manchiben Chimanbhai Tadvi convicting her for the offence u/S.302 r/w.S.114 IPC and sentencing her to suffer life imprisonment is hereby allowed and the impugned judgment and order of conviction and sentence recorded by the learned Judge convicting her for the offence u/S.302 r/w.S.114 IPC and sentencing her to suffer life imprisonment and to pay a fine of Rs.500/= in default to further undergo 1 year RI is hereby quashed and set aside. Fine, if paid, by the appellant-accused No.2-Manchiben be refunded to her. The appellant-accused No.2-Manchiben Chimanbhai Tadvi is on bail, therefore, her bail bonds stands cancelled.

##. The order of conviction and sentence passed by the learned Judge convicting the appellant-accused No.1Chimanbhai Dalsukhbhai Tadvi for the offence u/s.302 IPC r/w.Sec.114 IPC is altered and the appellant-accused is convicted for the offence u/S.302 IPC only and sentenced life imprisonment and to pay a fine of Rs.500/= in default to further undergo 1 month RI. Accordingly, this appeal is disposed of.

(B.J.Shethna, J.)

(J.R.Vora, J.)

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